108TH CONGRESS 1ST SESSION

S. 320

To amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 5, 2003

Mr. Greeg introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE; REFERENCES.
- 4 (a) Short Title.—This Act may be cited as the
- 5 "Family and Medical Leave Clarification Act".
- 6 (b) References.—Except as otherwise expressly
- 7 provided, wherever in this Act an amendment or repeal
- 8 is expressed in terms of an amendment to, or repeal of,
- 9 a section or other provision, the reference shall be consid-
- 10 ered to be made to a section or other provision of the Fam-

1 ily and Medical Leave Act of 1993 (29 U.S.C. 2601 et2 seq.).

3 SEC. 2. FINDINGS.

- 4 Congress finds the following:
 - (1) The Family and Medical Leave Act of 1993 (referred to in this section as the "Act") is not working as Congress intended when Congress passed the Act in 1993. Many employers, including those employers that are nationally recognized as having generous family-friendly benefit and leave programs, are experiencing serious problems complying with the Act.
 - (2) The Department of Labor's overly broad regulations and interpretations have caused many of those problems by greatly expanding the Act's coverage to apply to many nonserious health conditions.
 - (3) Those problems are also documented in a review of litigation under the Act. The validity of 13 different Department of Labor regulations relating to the Act has been challenged in 64 reported court decisions.
 - (4) From 1996 through 2002, 6 congressional hearings (2 in the Senate and 4 in the House of Representatives) documented numerous implementation problems with the Act due to the Department

- of Labor's misapplication of the Act through some of its regulations and interpretations.
 - (5) Documented problems generated by the Act include significant new administrative and personnel costs, loss of productivity, scheduling difficulties, unnecessary paperwork and recordkeeping, and other compliance problems.
 - (6) The Act often conflicts with employers' paid sick leave policies, prevents employers from managing absences through their absence control plans, and results in most leave under the Act becoming paid leave.
 - (7) Administrative problems associated with the use of intermittent leave under the Act are a well-documented issue. Approximately ³/₄ (76 percent) of the respondents to a 2000 survey by the Society for Human Resource Management said they would find compliance easier if the Department of Labor allowed covered leave to be offered and tracked in increments of half days rather than minutes.
 - (8) The Commission on Leave, established in title III of the Act (29 U.S.C. 2631 et seq.) which in 1996 reported few difficulties with compliance with the Act, failed to identify many of the problems with compliance because the survey on which the re-

- port was based was conducted too soon after the date of enactment of the Act and the most significant problems with compliance arose only when employers later sought to comply with the Act's final regulations and interpretations.
 - (9) A more recent Department of Labor survey, released in January 2001 as an update requested by Congress to the 1996 Commission on Leave report, found that between 1995 and 2000, there had been a 21.5 percent decline in the share of covered establishments reporting that it was somewhat easy or very easy to comply with the Act.
 - (10) According to the Society for Human Resource Management 2003 FMLA Survey, 50 percent of human resource professionals indicated that they have had to grant leave requests under the Act that they did not believe were legitimate because of the Department of Labor's interpretations, and 34 percent of human resource professionals were aware of employee complaints in the past 12 months due to coworkers' questionable use of leave under the Act.

22 SEC. 3. DEFINITION OF SERIOUS HEALTH CONDITION.

- 23 Section 101(11) (29 U.S.C. 2611(11)) is amended—
- 24 (1) by redesignating subparagraphs (A) and 25 (B) as clauses (i) and (ii), respectively;

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1	(2) by aligning the margins of those clauses
2	with the margins of clause (i) of paragraph (4)(A);
3	(3) by inserting before "The" the following:
4	"(A) In General.—"; and
5	(4) by adding at the end the following:
6	"(B) Exclusions.—The term does not in-
7	clude a short-term illness, injury, impairment,
8	or condition, for which treatment and recovery
9	are very brief.
10	"(C) Examples.—The term includes an
11	illness, injury, impairment, or physical or men-
12	tal condition such as a heart attack, a heart
13	condition requiring a heart bypass or valve op-
14	eration, a back condition requiring extensive
15	therapy or a surgical procedure, a stroke, a se-

subparagraph (A).".

that involves care or treatment described in

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1 SEC. 4. INTERMITTENT LEAVE.

- 2 Section 102(b)(1) (29 U.S.C. 2612(b)(1)) is amended
- 3 by striking the period at the end of the second sentence
- 4 and inserting the following: ", as certified under section
- 5 103 by the health care provider involved after each leave
- 6 occurrence. An employer may require an employee to take
- 7 intermittent leave under this Act in increments of up to
- 8 (and including) ½ of a workday. An employer may require
- 9 an employee who travels as part of the normal day-to-day
- 10 work or duty assignment of the employee and who re-
- 11 quests intermittent leave or leave on a reduced leave
- 12 schedule under this Act to take leave for the duration of
- 13 the work or assignment involved, if the employer cannot
- 14 reasonably accommodate the employee's request.".

15 SEC. 5. REQUEST FOR LEAVE.

- 16 Section 102(e) (29 U.S.C. 2612(e)) is amended by
- 17 inserting after paragraph (2) the following:
- 18 "(3) REQUEST FOR LEAVE.—If an employer
- does not exercise, under subsection (d)(2), the right
- to require an employee to substitute other employer-
- 21 provided leave for leave under this title, the em-
- 22 ployer may require the employee who wants leave
- 23 under this title to request the leave in a timely man-
- 24 ner. If an employer requires a timely request under
- 25 this paragraph, an employee who fails to make a
- timely request may be denied leave under this title.

1	"(4) Timeliness of request for leave.—
2	For purposes of paragraph (3), a request for leave
3	shall be considered to be timely if—
4	"(A) in the case of foreseeable leave, the
5	employee—
6	"(i) provides the applicable advance
7	notice required by paragraphs (1) and (2);
8	and
9	"(ii) submits any written application
10	required by the employer for the leave not
11	later than 5 working days after providing
12	the notice to the employer; and
13	"(B) in the case of unforeseeable leave, the
14	employee—
15	"(i) notifies the employer orally of the
16	need for the leave—
17	"(I) not later than the date the
18	leave commences; or
19	"(II) during such additional pe-
20	riod as may be necessary, if the em-
21	ployer is physically or mentally in-
22	capable of providing the notification;
23	and
24	"(ii) submits any written application
25	required by the employer for the leave—

"(I) not later than 5 working days after providing the notice to the employer; or "(II) during such additional pe-riod as may be necessary, if the employee is physically or mentally in-capable of submitting the applica-tion.".

9 SEC. 6. SUBSTITUTION OF PAID LEAVE.

Section 102(d)(2) (29 U.S.C. 2612(d)(2)) is amended 11 by adding at the end the following:

"(C) Paid absence.—Notwithstanding subparagraphs (A) and (B), with respect to leave provided under subsection (a)(1)(D), if an employer provides a paid absence under the employer's collective bargaining agreement, an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), or under any other sick leave, sick pay, or disability plan, program, or policy of the employer, the employer may require the employee to choose between the paid absence and unpaid leave provided under this title.".

1 SEC. 7. REGULATIONS.

2	(a) Existing Regulations.—
3	(1) Review.—Not later than 90 days after the
4	date of enactment of this Act, the Secretary of
5	Labor shall review all regulations issued before that
6	date to implement the Family and Medical Leave
7	Act of 1993 (29 U.S.C. 2601 et seq.), including the
8	regulations published in sections 825.114 and
9	825.115 of title 29, Code of Federal Regulations.
10	(2) Termination.—The regulations described
11	in paragraph (1), and opinions letters promulgated
12	under the regulations, cease to be effective on the ef-
13	fective date of final regulations issued under sub-
14	section (b)(2)(B), except as described in subsection
15	(e).
16	(b) REVISED REGULATIONS.—
17	(1) IN GENERAL.—The Secretary of Labor shall
18	issue revised regulations implementing the Family
19	and Medical Leave Act of 1993 that reflect the
20	amendments made by this Act.
21	(2) New Regulations.—The Secretary of
22	Labor shall issue—
23	(A) proposed regulations described in para-
24	graph (1) not later than 90 days after the date
25	of enactment of this Act; and

1	(B) final regulations described in para-
2	graph (1) not later than 180 days after that
3	date of enactment.
4	(3) Effective date.—The final regulations
5	take effect 90 days after the date on which the regu-
6	lations are issued.
7	(c) Transition.—The regulations described in sub-
8	section (a) shall apply to actions taken by an employer
9	prior to the effective date of final regulations issued under
10	subsection (b)(2)(B), with respect to leave under the Fam-
11	ily and Medical Leave Act of 1993.
12	SEC. 8. EFFECTIVE DATE.
13	The amendments made by this Act take effect 180
14	days after the date of enactment of this Act.

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